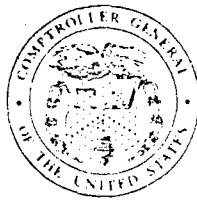


DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

51033

FILE: B-183864

DATE: September 23, 1975

MATTER OF: Free State Builders, Inc.

97433

DIGEST:

Incumbent contractor's protest after bid opening that IFB's estimated quantities of requirements do not accurately reflect actual amount of work performed under predecessor contract is untimely. Protester should have known upon receiving IFB that estimated quantities were inaccurate and protests against apparent solicitation improprieties must be filed prior to bid opening.

Free State Builders, Inc. (Free State), protested to our Office by letter dated April 29, 1975, under invitation for bids (IFB) No. GS-03B-49542, issued by the General Services Administration (GSA). The IFB contemplated a 1-year requirements-type contract for various estimated quantities of partition work in Government buildings. Seven bids were opened on April 24, 1975, and their evaluated prices were as follows:

Prince Construction Co.	\$ 209,224.60
Edward B. Friel, Inc.	303,342.50
Free State	303,970.00
Klein Construction Co., Inc.	360,910.00
Ogburn & Associates, Inc.	371,380.50
James B. Galloway Construction Co., Inc.	630,092.50
Silas Bolef Company	1,600,146.67

Free State's protest contended that the Prince Construction Co. (Prince) bid was unrealistically low and seriously in error because its unit prices revealed a lack of knowledge of the contract requirements. Also, Free State contended that the estimated quantities of various items of work specified in the solicitation did not accurately reflect the actual amount of work performed under the predecessor contract. Free State requested that Prince's bid be rejected, and that GSA cancel the IFB and resolicit using a revised bid form containing the most accurate quantities attainable.

Subsequently, GSA's July 14, 1975, report to our Office advised that Prince had alleged a mistake in its bid, and that the bid had

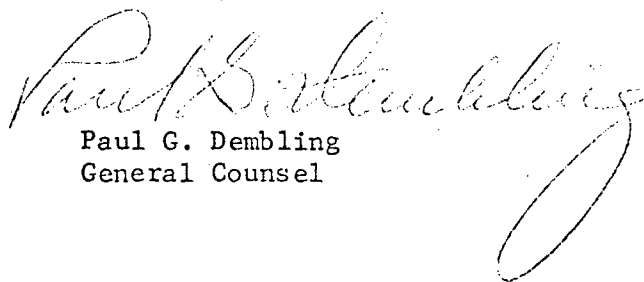
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been rejected by GSA. GSA also stated that cancellation of the IFB and a resolicitation using a revised estimate of the quantities of work requirements was not justified under the circumstances.

On July 24, 1975, a conference was held at our Office on this protest and other protests involving similar GSA term-contract solicitations. It was brought out at that time that Free State was the predecessor contractor for the work being procured under IFB -49542.

Under the circumstances, the portion of Free State's protest dealing with Prince's bid no longer need be considered. The remaining issue is whether the solicitation should be canceled and readvertised. We believe Free State's protest on this issue is untimely. Under our then Interim Bid Protest Procedures and Standards, protests against apparent improprieties in solicitations were required to be filed with our Office prior to the bid opening date. See 4 C.F.R. § 20.2(a) (1974). See, also, our Bid Protest Procedures, § 20.2(b)(1), 40 Fed. Reg. 17979 (1975). As the incumbent contractor, Free State presumably had knowledge of the actual quantities of requirements which had been ordered under the predecessor contract. When it received its copy of the IFB and was preparing its bid, Free State therefore was in a position to know that the estimated quantities stated in the IFB were apparently inaccurate. Free State did not file its protest prior to bid opening.

Accordingly, the protest is untimely and not for consideration.


Paul G. Dembling
General Counsel